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# Welcome to Another Edition of Thunderdome! - One Rule Enter, Two Rules Leave?

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If you're a fan of the old Mad Max movies, you'll remember that famous scene in Mad Max Beyond Thunderdome where Aunt Entity proudly declares "Welcome to another edition of Thunderdome!" The out-for-blood crowd repeats the ringleader's only rule of Thunderdome - "two men enter, one man leaves!" and, the man with no name (Mad Max) is ushered into the Thunderdome to face his opponent, the imposing Blaster. Are we seeing another edition of Thunderdome at the Federal level, with President Trump, his Executive Orders and possible new legislation on one side and the consumer advocate opposition on the other of the 'Dome?

What follows is a summary overview of some of President Trump's Memoranda and Executive Orders effecting the financial services industry, some possibly new proposed legislation and the opposition he is facing while in the 'Dome.

## Executive Orders

1. Suspension of Proposed Federal Regulations

On January 20th, President Trump's first day in office, he issued a Memorandum suspending all proposed federal regulations until further review and approval by a department or agency head appointed or designated by the President. You may remember that former President Obama issued a similar directive at the beginning of his presidency. Note that the Memorandum hasn't stopped the CFPB from attacking and enforcing the laws and regulations; they've been extremely active since the Inauguration.

2. Reducing Regulation and Controlling Regulatory Costs

On January 30th, President Trump issued an Executive Order on "Reducing Regulation and Controlling Regulatory Costs" to reduce the number of regulations and control regulatory costs, by providing that "whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed." In addition, the total incremental cost of all new regulations to be finalized in 2017 must be no greater than zero, and any new incremental costs of any new regulations must be offset by the elimination of existing costs in connection with at least two prior regulations.

Sure sounds like something akin to Thunderdome, only under this Executive Order - one rule enter and *two rules* leave! A few groups, like Public Citizen, the Natural Resources Defense council and the Communications Works of America filed a lawsuit challenging the executive order in the D.C. federal circuit. They allege among other things that the Executive Order exceeds President Trump's constitutional authority and is arbitrary, capricious and an abuse of discretion.

When this Executive Order was signed, the big question was whether agencies that typically considered themselves to be independent or "independent agencies," such as the Federal Trade Commission and the Consumer Financial Protection Bureau (CFPB), would take the position that the Executive Order did not apply to them because they were not "executive agencies." That question was answered in early February, when Dominic Mancini, Acting Administrator of the Office of Information and Regulatory Affairs issued a Memorandum stating that independent agencies (such as the CFPB) do not have to comply with President Trump's Executive Order on deregulation. The clarification means the CFPB will likely continue working on its Rules.

3. Rules That Promote or Inhibit the Administration's Priorities

President Trump also signed an Executive Order on February 3, 2017, that describes the Administration's principles of regulation (the "Core Principles"):

- empower Americans to make independent financial decisions and informed financial choices in the marketplace, save for retirement, and build individual wealth;
- prevent taxpayer-funded bailouts;
- foster economic growth and vibrant financial markets through a more rigorous regulatory impact analysis that addresses systemic risk and market failures;
- enable American companies to compete with foreign firms;
- advance American interests in international financial regulatory discussions and meetings;
- make regulation efficient, effective, and appropriately tailored; and
- restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

The Executive Order also directed the Secretary of the Treasury to consult with the heads of the member agencies of the Financial Stability Oversight Council (which includes CFPB Director Cordray) and report back to President Trump within 120 days (and periodically thereafter) on the extent to which existing laws, regulations, guidance, etc. promote or inhibit the Core Principles noted above. The Executive Order does not specifically mention the Dodd-Frank Act (DFA) or any specific rules or guidance by the CFPB, but the language is broad enough to include the DFA, CFPB rules and guidance documents. Steven Mnuchin was narrowly confirmed by the Senate as the new Secretary of the

Treasury on Valentine's Day. I'm sure he'll quickly get to work on consulting with the heads of the FSOC member agencies to craft his report.

Financial CHOICE Act 2.0

On February 6, 2017, a Memorandum seemingly from House Financial Services Committee Chairman Jeb Hensarling (R-TX) was released which describes the changes to be made to the introduced version of the Financial CHOICE Act (CHOICE Act 2.0).

The Memorandum states that the CFPB will be retained, but is to be re-structured as a civil law enforcement agency similar to the Federal Trade Commission, with additional restrictions on its authority:

- A sole director removable by the President at-will
- Elimination of consumer education functions
- Rulemaking authority limited to enumerated statutes
- UDAAP (unfair, deceptive and abusive) authority repealed in full
- Supervision repealed
- Consumer complaint database repealed
- Market monitoring authority repealed
- Enforcement powers limited to cease and desist and CID/Subpoena powers
- Mandatory advisory boards repealed and research function eliminated
- Strengthen the existing language of the DFA that says the CFPB's jurisdiction does not include entities regulated by either the Securities and Exchange Commission or Commodities Future Trading Commission

If you think we're not watching the Federal equivalent of Thunderdome, just google some of the opposition's comments to Rep. Hensarling's bill. Grab some popcorn for the show and hang on, because they're only just getting started!

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